



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric
Company in its 2005 Nuclear
Decommissioning Cost Triennial
Proceeding.

Application 05-11-009
(Filed November 10, 2005)

**OPENING BRIEF OF
THE DIVISION OF RATEPAYER ADVOCATES**

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June 23, 2006

		Monetary	Discussion
	DRA Recommendation	Impact	Page Cite
1	DRA recommends that the Commission adopt the settlement agreement	Numerous	1 (see also Joint Statement supporting the Settlement Agreement)
2	The Commission should authorize an Independent Board of Consultants to ensure that the Decommissioning of Humboldt Bay Unit 3 is performed in a cost effective manner.	Approximately \$700,000/year	4
3	The Trust Agreement should be amended to read:: <i>"The Company shall not transfer its interest in the Master Trust to a corporate affiliate without prior approval of the Commission."</i>	Protects \$1.8 billion in the decommissioning trusts.	2

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Pursuant to Rule 75 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure and the schedule established by the Assigned Commissioner and Administrative Law Judge, the Division of Ratepayer Advocates (DRA) files this Opening Brief for the above captioned proceeding. In its application, Pacific Gas and Electric Company (PG&E) requests annual revenue requirement increases to fund the decommissioning trusts for Diablo Canyon Power Plant and Humboldt Bay Power Plant. DRA entered into a Settlement Agreement with PG&E resolving all issues except trust protection language and the formation of an Independent Board of Consultants (IBC) for the Humboldt Bay Unit 3 decommissioning activities scheduled to commence in 2009.

I. DRA SUPPORTS THE SETTLEMENT AGREEMENT

PG&E, DRA, and The Utility Reform Network (TURN) executed a Settlement Agreement on May 25, 2006, that settled a substantial number of issues in the proceeding. The Settlement Agreement was the result of hard bargaining between the settling parties, and is in the public interest. DRA supports Commission adoption of the Settlement Agreement. DRA, PG&E, and TURN have concurrently filed a Joint Statement in Support of the Settlement Agreement.

II. DRA SUPPORTS ADDING TRUST PROTECTION LANGUAGE TO THE TRUST DOCUMENTS AND PG&E DOES NOT OPPOSE DRA'S LANGUAGE

Although the Settlement Agreement includes DRA's request to add language to the Trust that prevents trust funds being transferred without prior Commission approval, DRA emphasizes the importance of such language. During PG&E's 2001-2003 bankruptcy, PG&E attempted to use the federal Bankruptcy Court to transfer Diablo Canyon and its decommissioning trust funds to a subsidiary of PG&E Corporation, removing the decommissioning trust funds from Commission oversight. PG&E also sought approval from the Nuclear Regulatory Commission (NRC) for the transfer.¹ The Commission opposed PG&E's transfer attempt.² The PG&E Bankruptcy Settlement, adopted by the Commission D.03-12-035, superseded the Diablo Canyon transfer proposal. In this proceeding, the Commission should protect the decommissioning trust funds so that when Diablo Canyon is decommissioned (2025 or 2045), ratepayer funds will still be available to perform the work. The best way to protect the decommissioning trust funds is to include language in the actual trust documents that prevents unapproved transfers.

Since the Commission has already experienced PG&E's attempt to transfer the decommissioning trusts during PG&E's bankruptcy proceeding, it is prudent to prevent a reoccurrence of that action. As such, DRA supports the following nuclear decommissioning trust protection language contained in Exhibit 10 at pages 15-16:

The following language should be added to the end of sections 2.07 and 2.06 of the Qualified and Nonqualified Nuclear Decommissioning Trust Agreements, respectively: 'The Company

¹ PG&E Letter DCL-01-119, November 30, 2001, cited in Exh. 10 at 13, fn. 53.

² NRC CLI-02-16 at 4, <http://www.nrc.gov/reading-rm/doc-collections/commission/orders/2002/2002-16cli.html>, cited in Exh. 10 at 14, fn. 57.

shall not transfer its interest in the Master Trust to a corporate affiliate without prior approval of the CPUC.’

The Settlement Agreement makes it clear that PG&E does *not* oppose DRA’s decommissioning trust language:

In DRA’s ‘Report on Pacific Gas and Electric Company’s Application Regarding the Nuclear Decommissioning Cost Triennial Proceeding,’ DRA witness Truman Burns recommends that section 2.07 of the Nuclear Decommissioning Qualified Trust Agreement and section 2.06 of the Nonqualified Nuclear Decommissioning Trust Agreement be amended to include the following language, ‘The Company shall not transfer its interest in the Master Trust to a corporate affiliate without prior approval of the CPUC.’ At page 6 of the Prepared Testimony of James S. Adams on behalf of Scott L. Fielder, Adams recommends, ‘The CPUC make an order that no DTF [Decommissioning Trust Funds] funds may be transferred without prior CPUC approval’ and that the CPUC issue an order barring any utility, any successor corporation, or any affiliate company from using DTF funds to pay its debts. *PG&E has no objection to the recommendations of Truman Burns and James S. Adams, provided it is understood that the DTF can be used subject to the terms of the Decommissioning Trust Agreement to pay debts of the utility that arise from decommissioning activities and from the administrative cost of operating the fund.*

Settlement Agreement at 7, Para. 12 (emphasis added).

DRA does not oppose the decommissioning trust protection language included in Mr. Adams testimony, which complements DRA’s since it proposes Commission orders that would further protect the decommissioning trusts.

III. DRA SUPPORTS THE PROPOSED HUMBOLDT BAY UNIT 3 DECOMMISSIONING INDEPENDENT BOARD OF CONSULTANTS

DRA supports the establishment of a Humboldt Bay Unit 3 decommissioning IBC, as recommended by Scott Fielder.³ PG&E did not settle on and opposes the formation of the IBC. DRA requests that the Commission consider Mr. Fielder's request to establish such a cost oversight board.

Beginning in 2009, PG&E proposes to spend \$353 million (2004\$) on decommissioning Humboldt Bay Unit 3, a complex task the company has not undertaken before.⁴ Close scrutiny of this major expenditure by an IBC would be valuable, especially since PG&E's Humboldt Unit 3 decommissioning trust funds are currently under-funded.

The IBC would have several functions including, but not limited to reviewing PG&E's decommissioning plans and schedules, preparing periodic public reports on decommissioning activities, highlighting cost containment opportunities, and providing information to the public. The IBC would not have veto power over PG&E's decommissioning activities. DRA assumes that the Commission would appoint the IBC members, similar to the appointment of members of the Diablo Canyon Independent Safety Committee (DCISC). The IBC would be terminated when Humboldt Unit 3 is decommissioned.

DRA admits that thorough discussion of the IBC's duties has not been analyzed by Mr. Fielder. Both DRA and Mr. Fielder recognize that the Commission will decide on the IBC's complete duties at a later date.⁵ DRA recommends that in conjunction with the IBC's activities, PG&E commits to: (1) regular community relations meetings regarding Humboldt Bay Unit 3

³ Exh. 11 at 2-3; Exh. 15 at 5.

⁴ Exh. 10 at 6.

⁵ ADAMS 140:11-16.

decommissioning and (2) quarterly reports to the Commission on decommissioning progress. The quarterly reports should include financial information that at minimum provide decommissioning expenditures and estimated costs. The Commission should also consider Public Participation Hearings, as needed.

IV. CONCLUSION

DRA requests that the Commission adopt the Settlement Agreement, adopt DRA's trust protection language, and form an IBC to oversee decommissioning costs for Humboldt Bay Unit 3.

Respectfully submitted,

/s/RASHIDRASHID

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Date: June 23, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document **OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES** in **A.05-11-009**.

A copy has been e-mailed on all known parties of record who have provided e-mail addresses. In addition, all parties have been served by first-class mail.

Executed in San Francisco, California, on the **23rd** day of **June, 2006**.

/s/ HALINA

MARCINKOWSKI

Halina Marcinkowski

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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